

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ARMEN SARGSYAN,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,*

Respondent.

No. 04-71312

Agency No. A75-708-648

MEMORANDUM**

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005***

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

* Alberto R. Gonzales is substituted for his predecessor, John Ashcroft, as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, Sargsyan's request for oral argument is denied.

Armen Sargsyan, a native and citizen of Armenia, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000), and we deny the petition for review in part and dismiss in part.

The BIA did not abuse its discretion in denying Sargsyan's untimely motion to reopen because Sargsyan failed to establish *prima facie* eligibility for asylum or withholding of removal based upon changed country conditions in Armenia. *See Mendez-Gutierrez v. Ashcroft*, 340 F.3d 865, 869-70 (9th Cir. 2003) ("prima facie eligibility for the relief sought is a prerequisite for the granting of a motion to reopen").

We lack jurisdiction to consider Sargsyan's claim that he did not receive notice of the BIA's decision because the notary used her own address rather than Sargsyan's, because Sargsyan did not raise this argument before the BIA in his motion to reopen. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.